IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.3.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

A.S.No.945 & 946 of 2004

The Special Tahsildar & Land Acquisition Officer Tamil Nadu Housing Scheme Nandanam, Chennai 35.	..	Appellant in both appeals/Referring Officer

Vs.

Thilagam	..	R1 in AS No. 945/04 & R3 in AS No.946/04/Claimant
Duraivelu Thambiran Manimekalai Sivakumar	..	R1, R2, R4 & R5 in AS No.946/04/Claimant
The Chairman Tamil Nadu Housing Board Nandanam, Chennai 600 035.	..	R2 in AS No. 945/04 & R6 in AS No.946/04/Beneficiary

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Appeal filed u/s 554 of Land Acquisition Act against the order dated 25.11.2003 made in LAOP Nos.47 and 48 of 1993 on the file of Additional District Juage and Fast Track Court No.4, Poonamallee.

For Appellant : Mr.V.Ravi, Spl.G.P.

For Tamil Nadu
Housing Board : Mr.K. Chelladurai

For Respondents/ Mr.M.Venkatachalapathy, S.C.
Claimants : For Mr.R.Mahalingam

J U D G M E N T

(Delivered by P.D.DINAKARAN, J)

The above appeals are directed against the order dated 25.11.2003 made in LAOP Nos.47 and 48 of 1993 on the file of

Additional District Judge (Fast Track Court No.4), Poonamallee.

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FACTS OF THE CASE

2.1. The Tamil Nadu Housing Board, by its resolution No.385 dated 29.7.1973 resolved to acquire lands for the purpose of providing housing facilities to the industrial workers in and around Ambattur area under Ambattur Neighbourhood Scheme. Accordingly, the lands of an extent of 56 cents and 115 cents located in Survey Nos.513/2 and 566, Ambattur Village and Taluk, Tiruvallur District were acquired, pursuant to the notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") published in the Tamil Nadu Government Gazette on 12.11.1975 and enquiry under Section 5-A of the Act conducted on 29.3.1976 and 30.3.1976.

2.2. After complying with the procedure contemplated under the Act and relying upon two documents even dated 22.11.1973 with regard to the lands of an extent of 22 cents and 11 cents respectively located in Survey No.561/B, the Land Acquisition Officer, by Award Nos.4 and 6 of 1986 dated 23.9.1986 fixed the compensation at Rs.545/- per cent.

2.3. Aggrieved by the said compensation, the claimants have filed petitions in LAOP Nos.47 and 48 of 1993 under Section 18 of the Act, seeking additional compensation with respect to their lands acquired.

2.4. In the meanwhile, the Land Acquisition Officer filed an interim application in I.A.Nos.1217 and 1218 of 1996 in LAOP Nos.47 and 48 of 1993 to declare that the reference made by the Referring Officer is null and void, illegal and unenforceable and to permit withdrawal of the above reference on the ground that the respondents/claimants prepared fictitious applications in connivance with the officials. The said interim applications were dismissed by the learned Fast Track Court Judge, Poonamallee, by order dated 16.9.2003.

2.5. The learned Fast Track Court Judge, by order dated 25.11.2003, placing reliance on Ex.C1 dated 15.3.1973 with respect to the land of an extent of 3672 sq.ft. in Survey No.600, enhanced the award of Rs.545/- per cent to Rs.4,571/-. Aggrieved by the same, the Land Acquisition Officer has filed the above appeals.

CONTENTIONS ON BEHALF OF THE APPELLANT

3.1. The learned Special Government Pleader vehemently contends that the reliance placed by the Fast Track Court Judge on Ex.C1 dated 15.3.1973 is unjustified, as the said land located in Survey No.600 cannot be compared with the land acquired in S.Nos.513/2 and 566, as it is far away from the land in question, whereas the data land, which is located in Survey No.561/B, is very nearer to the lands acquired in the above appeals.

3.2. It is also contended that in view of the bar under Section 18(2) of the Act, the application seeking reference under Section 18 of the Act is liable to be dismissed, as, the award was passed on 23.9.1986 and the respondents/claimants had chosen to file an application for reference only on 21.1.1993, i.e. nearly after seven years, which they ought to have filed within six weeks from the date of the award.

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3.3. To buttress the above contentions, learned Special Government Pleader placed reliance on the decisions in

(i)Mohd. Hasnuddin v. State of Maharashtra ((1979) 2 SCC 572);

(iii)Officer on Special Duty (Land Acqn.) v. Shah Manilal Chandulal ((1996) 9) SCC 414); and

(v)State of Karnataka v. Laxuman (2005 (8) Supreme 49 = 2005 (8) Scale 760).

3.4. In CMP Nos.8653 and 8654 of 2006 in A.S.Nos.945 and 946 of 2004 respectively, the learned Special Government Pleader seeks the permission of this Court to raise additional grounds, viz.,

(a) the Court below ought to have rejected the application of the respondents/claimants for reference under Section 18 of the Act as the same has been submitted beyond the statutory period of six weeks as per section 18(2) of the Act; and

(b) the Court below ought not to have entertained the reference nearly after seven years.

CONTENTIONS ON BEHALF OF THE RESPONDENTS/CLAIMANTS

4.1. Per contra, Mr.M.Venkatachalapathy, learned senior counsel appearing for the respondents/claimants, apart from justifying the amount awarded by the Court below, contends that the reliance placed on the document dated 15.3.1973 with respect to an extent of 3672 sq.ft. by the Court below is correct.

4.2. The learned senior counsel further contends that the impugned award amount at the rate of Rs.4,571/- per cent is also aided with the decision of the Sub Court dated 5.1.1990 made in LAOP No.208 of 1987, which also arose under the same acquisition proceedings.

4.3. On the question of law, learned senior counsel contends that even though the appellant has taken applications in I.A.Nos.1217 and 1218 of 1996 before the Court below to withdraw the above reference on the ground that the reference was made to the Court on 21.1.1993 nearly after seven years of passing of the award on 23.8.1986, the said contention was rejected by the learned Fast Track Court Judge, by order dated 16.9.2003 made in I.A.Nos.1217 & 1218 of 1996, after having accepted the case of the respondents/ claimants that the appellant sent the reference to the Court after a considerable delay and such default on the part of the appellant cannot be put against respondents/claimants.

4.4. The learned senior counsel further contends that if there is no entry in the Register maintained by the appellant, the appellant alone can be found fault with, but not the respondents/claimants and no mala fide can be attributed against the respondents/claimants for manipulation of records.

4.5. The learned senior counsel, inviting our attention to the order dated 16.9.2003 in I.A.Nos.1217 & 1218 of 1996, would argue that assuming the appellant has got any grievance against the said order, the appellant ought to have challenged the same in revision or in any appropriate proceedings and having failed to do so, the said order has become final

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and accordingly, it is binding and therefore, the appellant is not entitled to contend now that the application for reference under Section 18(1) itself is neither barred as per Section 18(2) nor the proceedings initiated and the award are a nullity in the eye of law.

4.6. In any event, the learned senior counsel contends that there is no need to interfere with the award as the same is purely based on the award passed in identical matters and therefore, the respondents/claimants are entitled to the amount awarded by the Court below in the order dated 25.11.2003, even as per Section 28A of the Act and therefore, the technical objection made by the appellant based on the limitation is not sustainable in law.

4.7. To strengthen the above contentions, learned senior counsel relied on the judgments cited below:

(i)Ram Kali Bhattacharjee v. State of West Bengal (1995 Supp. (3) SCC 314);

(iii)Kaushalya Devi v. State of Punjab (2000 (1) LACC 462);

(v)Neki Ram v. State of Haryana (2001 (2) LACC 359);

(vii)State of Tripura v. Roopchand Das ((2003) 1 SCC 421); and

(ix)Union of India v. Munshi Ram ((2006) 4 SCC 538).

5. We have given our careful consideration to the submissions made by both sides and also perused the records.

POINTS FOR CONSIDERATION

6. The points that arise for our consideration, are thus:

(i) Whether the reference made under Section 18(1), adjudicated and awarded by the Court below by order dated 25.11.2003 in LAOP Nos.47 & 48 of 1993 is barred by limitation prescribed under Section 18(2) of the Act and whether such question can be gone into in the present appeal when I.A.Nos.1217 & 1218 of 1996 preferred by the appellant to withdraw the reference was rejected by the Court below by order dated 16.9.2003, which was not challenged by the appellant either in revision or in any other manner known to law? and

(ii) Whether the amount awarded by the Court below is sustainable on merits?

POINT (i)

7.1. "Whether the reference made under Section 18(1), adjudicated and awarded by the Court below by order dated 25.11.2003 in LAOP Nos.47 & 48 of 1993 is barred by limitation prescribed under Section 18(2) of the Act and whether such question can be gone into in the present appeal when

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I.A.Nos.1217 & 1218 of 1996 preferred by the appellant to withdraw the reference was rejected by the Court below by order dated 16.9.2003, which was not challenged by the appellant either in revision or in any other manner known to law?"

7.2. It is true, the Apex Court, in Ram Kali Bhattacharjee v. State of West Bengal (1995 Supp. (3) SCC 314) was dealing with a case where a Division Bench of Calcutta High Court noticed that the reference applications were made beyond limitation and therefore, the award of the Civil Court was without jurisdiction. In the said circumstances, the Apex Court has held that it is not desirable to decide the controversy without any factual foundation and remitted the matter to the Reference Court to decide whether the reference applications were made within limitation in accordance with law and if the finding is in favour of the claimant, then to decide the compensation according to law.

7.3.1. In Kaushalya Devi v. State of Punjab (2000 (1) LACC 462), the claimant/lady, who sought enhancement of the award, was called upon by the Land Acquisition Collector to produce the proof for her acceptance of compensation under protest and that the reference under Section 18 of the Act was filed within time. But the claimant was never conveyed that her application for making the reference was declined. It is, under that context, the Division Bench of Punjab & Haryana High Court held that every person whose lands stand acquired has an inherent right to get enhanced compensation if the competent court wants to increase the same and that the Land Acquisition Collector wrongly ordered that the reference was time barred, as the claimant was not able to furnish the proof of her having accepted the amount under protest.

7.3.2. The above decision is not applicable to the facts of the case, as, in the instant case, the Land Acquisition Officer, in the proceedings initiated under Section 18(2) based on a reference, of course, forwarded by the then Land Acquisition Officer, has taken specific pleas that

(a) the application for reference itself is not available,
(b) there is no entry in the relevant register maintained for the receipt of the reference application,
(c) there was manipulation of records by the vested interested officer in forwarding the so called copy of the reference applications,
(d) xerox copy of the said proceedings does not contain the signature of any officer, and
(e) neither the certified copies nor the xerox copies of the applications filed by the respective claimants in the matter were enclosed along with the proceedings which forms the basis for initiating reference.

On the other hand, what was enclosed are Exs.R6 & R7, which appear to be only the xerox copy of the statements dated 22.8.1986 and 17.2.1986, which is earlier to the passing of the award and the statement recorded by the Land Acquisition Officer dated 12.11.1986, which is after passing of the award.

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7.4. In O.P.No.47 of 1993, the statement made by Thilagam dated 22.8.1986, Ex.R6, which is prior to the passing of the award reads as follows:

ஞசெங்கற்பட்டு சில்லா சைதாப்பேட்டை தாலுகா அம்பத்துர் கிராமத்தில் எனக்குச் சொந்தமாகவுள்ள கீழ்கண்ட விவரப்படிக்கான நிலத்தைத் தமிழ்நாடு வீட்டு வசதி வாரியம், நந்தனம், சென்னை 35ல் (நி.எ.4) அலுவலகத்தில் மேற்படி ஆர்ஜித நடவடிக்கைகள் குறித்து எனக்கு நோட்டீசு அனுப்பியதன் பேரில் நான் கீழ்கண்ட விவரங்கள் தெரிவிக்கலானேன்.

அம்பத்துர் கிராமம்

ச.எண்.513/2 விஸ்தீரணம் ஏ 0.56 செண்டு

மேற்படி நிலத்தை நானே கிரயம் பெற்று அனுபவித்து வருகிறேன். இந்த நிலத்தை கொரட்டூர் கிராமத்தில் இருக்கும் திரு.கந்தசாமி முதலியார் என்பவரிடம் விற்பதற்காக செய்துகொண்ட அக்ரிமெண்டுப்படி ரூ.2000/– இரண்டாயிரம் மட்டும் நான் பெற்றுக்கொண்டது வாஸ்தவம். மேற்படி நிலத்திற்கு தமிழ்நாடு வீட்டு வசதி வாரியத்தில் நஉடிட ஈடாக செண்டு 1க்கு ரூபாய் 545/– வீதமும் அதில் 40% அபிவிருத்திச் செலவிற்காகவும் சீர்திருத்தச் செலவிற்காகவும் கழித்தும் 30% சொலேஉடியம், 12% கூடுதல் செய்தும் கொடுக்கப்பட இருக்கும் விபரம் தெரிந்து கொண்டேன். தற்பொழுது, செண்டு ரூபாய் 2000/–க்கு மேல் விற்பனையாகிறது. எனவே அந்த விகிதத்தில் நஉடிட ஈடுத் தொகையை என்னிடமே வழங்குமாறு கேட்டுக்கொள்கிறேன். அசல் பத்திரம் மட்டும் மேற்கண்ட கந்தசாமி முதலியாரிடம் கொடுத்துள்ளேன். இந்த நிலத்தில் கிணர், பம்புசெட், மரங்கள் ஏதும் கிடையாது. காலி நிலம். விவசாயம் செய்து வருகிறேன். இந்த நிலம் என் சகோதரர்கள் கொடுத்த பணத்தை வைத்து என் பெயரில் கிரயம் பெற்றேன். எனினும் இந்த நிலத்தில் என்னைத் தவிர வேறு யாருக்கும் உரிமை இல்லை. இந்த நிலத்தின் நஉடிட ஈடுத் தொகையை என்னிடமே கொடுக்குமாறும் கேட்டுக்கொள்கிறேன்.

வாரிசுதாரர் விபரம்

1) திலகம் ஞநடக 49
2) மு,சுப்ரமண்யம் கணவர் 56
3) மணிமேகலா மகள் 21 திருமணமாகிவிட்டது
4) சிவகுமார் மகன் 6

மேற்படி சொத்தில் முன்பக்கத்தில் தெரிவித்த விபரப்படி தவிர வேறு வில்லங்கம் ஏதும் இ ல்லையென்றும் தெரிவித்துக்கொள்கிறேன்,

படிக்கக் கேட்டேன். சரியாக உள்ளது.ஞ

(emphasis supplied)

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7.5. Similarly, the statement made by Thilagam dated 12.11.1986, Ex.R6, which is after passing of the award, reads as follows:

ஞசைதை தாலுகா, 72 அம்பத்துர் கிராமத்தில் சர்வே எண்.513/2ல் உள்ள 0.56 ஏக்கரா நிலத்தை தனி வட்டாட்சியர் (நி.எ) 4, நந்தனம் சென்னை 35 அவர்களால் அவார்டு எண் 4/86 நாள் 22.9.86ன் உத்தரவுப்படி தமிழ்நாடு வீட்டு வசதி வாரியத்திற்காக எடுத்துக் கொள்ளப்பட்ட விவரத்தை தெரிந்து கொண்டேன்.

இந்த நிலம் அர்சுனப்பிள்ளை பாரியாள் பத்மாவதியம்மாள், அர்சுனப்பிள்ளை குமாரர் பத்தையப்பிள்ளை ஆகிய இருவரிடமிருந்து சுத்த கிரயம் பெற்றதாகும். இவர்கள் இறந்து விட்டனர். இந்த சொத்து 1963ம் வருஉடிம் மார்ச் மாதம் 7ந் தேதி எழுதிக் கொடுத்த விடுதலைப்

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பத்திரப் பிரகாரம் வியமார், பாகத்துக்கு வந்த சொத்தை நான் 14.3.1973 அன்று 646ம் நெம்பராக பதிவு செய்யப்பட்டுள்ளது. அது முதற கொண்டு என் அனுபவத்தில் உள்ளது. இந்த நிலம் எனக்கு முழு உரிமையாகும். இந்த நிலத்துக்கான ஒரிஜினல் பத்திரத்தை தாக்கல் செய்துள்ளேன்.

இந்த நிலத்தை காட்டி, பதிவு செய்யப்படாத ஒரு அக்ரிமெண்டு மூலம் கொரட்டூரில் வசிக்கும் திரு.கந்தசாமி " பார்த்தசாரதி என்பவரிடம் ரூ.2000/– ய நிலத்த விற்பதற்கு அட்வான்சாக கெற்றுக் கொண்டதை தவிர வேறு வில்லங்கம் இந்த நிலத்தின் மேல் எதுவ மில்லை. இந்த அக்ரிமெண்ட் ரிஜிஸ்தர் செய்யப்படாத ஒன்றாகையால், அதற்கும், இந்த நஉடிட ஈட்டுத் தொகை வாங்குவதற்கும் எந்தவித சம்மந்தமில்லை. இந்த நிலத்துக்குண்டான பத்திரத்தை தாக்கல் செய்துள்ளேன்.

மேற்கண்டி நிலத்துக்கான நஉடிட ஈட்டுத் தொகை ரூ.47700.50 க்கான ஊ பாரம் செக்கை பெற்றுக் கொண்டேன். இனி இந்த நிலத்தில் பிரவேசிக்க மாட்டேன். பிரவேசித்தால் கிரிமினல் நடவடிக்கை எடுக்கலாம் என்பதையும் தெரிந்து கொண்டேன்.

படிக்கக் கேட்டேன்/சரி.

12.11.1986

(emphasis supplied)

7.6. In both the above statements dated 22.8.1986 and 12.11.1986 made by Thilagam, respondent/claimant, she has stated that she had entered into an agreement to sell the impugned land to one Kandaswamy of Korattur Village for a total sum of Rs.2,000/- and that she had the knowledge that the respondent Board proposed to pay the compensation at Rs.545/- per cent and the sale price of the impugned land was about Rs.2,000/- per cent and received an advance of Rs.2,000/-.

7.7. In O.P.No.48 of 1993, the statement made by Subramanian dated 17.2.1986 prior to the passing of award, reads as follows:

மேற்கண்ட நிலத்தை என் மனைவி திலகம் பெயரில் வாங்கினேன். மகன் பச்சை பிள்ளையிடம் அவர் தாய் பத்மாவதியம்மாளிடம் 1973ல் திலகத்திற்கு வாங்கப்பட்டது. மேற்கண்ட பத்திரத்தை கொரட்டூர் அவுசிங் போர்டு வீட்டில் குடியிருக்கும் பார்த்தசாரதி என்கிற கந்தசாமி முதலிக்கு ஒரு அக்ரிமெண்டு எழுதி ரூ.2000/– பெற்றுக்கொண்டு பத்திரத்தையும் அவரிடம் கொடுத்து விட்டேன். நிலம் என் சுவாதீனத்தில் உள்ளது. தற்சமயம் பயிர் வைத்துள்ளேன். மேற்கண்ட நிலத்திற்கு தமிழ்நாடு வீட்டு வசதி வாரியம் செண்டு 1–க்கு ரூ.545/– வீதமும் இதில் 40% சதவீதம் சீர் திருத்தம் மற்றும் அபிவிருத்தி முதலியவற்றிற்கு கொடுக்கப்படும் என்று தெரிந்துக்கொண்டேன். மேற்படி நஉடிட ஈட்டுத் தொகை மிகவும் குறைவு. ஆகவே செண்டு ஒன்று ரூ.1200/– வீதம் கொடுக்கும்படி கோருகிறேன். என் மனைவிக்கு கீழ்க்கண்ட வாரிசுகள் உள்ளனர்.

1) சுப்ரமணியம் (கணவன்) 55

2) சிவக்குமார் (மகன்) 5

மேற்கண்ட நிலத்தில் கட்டிடங்களோ, மரங்களோ, கிணறோ ஏதும் இல்லை.

மேற்சொன்ன கந்தசாமியை தவிர வேறு யாருக்கும் நிலத்தின் மீது கடன்கள் வாங்கவில்லை. மேற்படி நஉடிட ஈட்டுத் தொகையை என்னிடமே கொடுக்க கோருகிறேன். இந்த ஸ்டேட்மெண்டை கொடுக்கிறேன். நோட்டீசில் ச.நெ.522/7 சேர்த்து கொடுத்துள்ளார்கள். இந்த நிலம் எனக்கோ, என் மனைவிக்கோ ஏதும் உரிமை கிடையாது..

(emphasis supplied)

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7.8. Similarly, in the statement dated 17.2.1986, Subramanian, respondent/claimant has stated that the impugned lands were purchased in the name of his wife Thilagam and she had entered into an agreement with one Kandaswamy for the sale price of Rs.2,000/- per cent and received an advance of Rs.2,000/-.

7.9. The above referred to exhibits, viz. Exs.R6 & R7 alone form basis for reference. Ex.R6, statements of Thilagam, prior to the award and after the award, carries the left thumb impression of Thilagam.

7.10. Ex.R7, statement of Subramanian, was enclosed with the covering letter dated 21.1.1993, which is a part of Ex.R7, reads as follows:

ஞமடிப்பபாக்கம் எண்.5 பொன்னியம்மன் கோவில் தெருவில் வசிக்கும் சின்னகன்னி நாயக்கர் குமாரர் க.சுப்ரமணியம் அவர்கள் 26.11.86 அன்று நில ஆர்ஜித தாசில்தார் அவர்களுக்கு அனுப்பிய மனுவின் நகல்.

ஐயா,

ஐசதாப்பேட்டைத் தாலுக்கா நெ.72 அம்பத்தூர் கிராமத்தின் சர்வே எண்கள்

1/	566-1v	0/56
2/	566-1gp	0/26
3/	566-1rp	0/28
4/	566-2v	0/02 1-2
5/	566-2gp	0/1 1-2

நிலம் எனக்குச்ச சொந்தமானது.

மேற்படி எனக்குச் சொந்தமான நிலங்களை வீட்டு வசதி வாரியத்திற்காக அரசாங்கம் ஆர்ஜிதம் செய்துள்ளது.

நிலத்தை ஆர்ஜிதம் செய்வதற்காக கொடுத்த 4(1) நோட்டீசு தேதிக்கு முன்பே ஆர்ஜிதம் செய்த நிலம் சென்ட் ரூ.7000./ (ஏழு ஆயிரத்துக்கு) மேல் பெறும். ஆகவே தாங்கள் நிர்ணயம் செய்துள்ள விலை நியாயமானதல்ல.

ஆகவே தாங்கள் என்னிடம் ஆர்ஜிதம் செய்த நிலத்திற்கு சென்ட் ஒன்றுக்கு ரூ.7000/- (ரூ.ஏழு ஆயிரம் மட்டும்) என்று விலை நிர்ணயம் செய்து கொடுக்கும்படி கேட்டுக்கொள்கின்றேன். இல்லையென்றால் என்னுடைய

கேசை கோர்ட்டிற்கு விலை நிர்ணயம் செய்ய அனுப்பும்படிக் கேட்டுக்கொள்கிறேன்.

இப்படிக்கு,

கே.சுப்பிரமணி.

/உண்மை நகல்/

தனி வட்டாட்சியர் (நிஎ.) ஆலரு 4

தமிழ்நாடு வீட்டு வசதி வாரியம்

திருமங்கலம், சென்னை–101.

7.11. The above said covering letter did not contain any signature of the Tahsildar nor any reference. In the said letter, even though it is stated that the claimant demanded compensation at Rs.7,000/- per cent, no such averments were made in the statement given by Subramanian, which was enclosed therewith.

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7.12. However, the appellant, in his proceedings dated 28.4.1995, as evident from the relevant files, has stated as follows:

> "In Award No.4/86 dt.22.9.86 an extent of 0.56 acre in S.No.513/2 belonging to Tmt.Thilagam w/o K.Subramaniam and in Award No.6/86 dt.23.9.86. The lands measuring 0.56 acre in S.No.566/1A, 0.26 acre in S.No.566/1B, 0.28 acre in S.No.566/D, 0.02½ acre in S.No.566/2A and 0.02½ acre in S.No.566/2B belonging to Thiru K.Subramaniam s/o Chinnakanni Naicker were acquired.
>
> As per the official records there is no indication in the connected register about filing application under section 18 of the Land Acquisition Act by the land owners. It is seen that the separate applications have been prepared during January 93 i.e. after a lapse of six years as if prepared during November 86 and referred the applications to the Sub Court, Poonamallee during January 93 and the Sub Court also assigned LAOP Nos.47/93 and 48/93. The irregularity was found and the Government was addressed for appropriate orders in the matter."

7.13. But, these vital factors were not taken into consideration by the learned Fast Track Court Judge, while dismissing I.A.Nos.1217 & 1218 of 1996, by order dated 16.9.2003. The prayer in I.A.Nos.1217 & 1218 of 1996 was to declare the reference made by the Referring Officer as null and void, illegal and unenforceable and for permission to withdraw the above reference. The said applications were rejected by the Court below by an order dated 16.9.2003 and thereafter, by order dated 25.11.2003 in LAOP Nos.47 and 48 of 1993, the compensation was enhanced to Rs.4,571/- from Rs.545/- per cent. Of course, the appellant had not challenged the order dated 16.9.2003 made in I.A.Nos.1217 & 1218 of 1996. But, the appellant has now filed CMPs to raise additional grounds in the present appeals, viz.

(i) the Court below ought to have rejected the application of the respondents/claimants for reference under Section 18 of the Act as the same has been submitted beyond the statutory period of six weeks as per section 18(2) of the Act; and
(ii) the Court below ought not to have entertained the reference nearly after seven years.

What all the appellant contended in the said I.As. are that the applications for reference made under section 18(1) of the Act are not maintainable in law as the same were barred by limitation. Since the said contention is purely a legal point, which goes to the very root of the jurisdiction of the Court, in our considered opinion, even without challenging the order dated 16.9.2003 made in I.A.Nos.1217 & 1218 of 1996, appellants are still entitled to agitate the point before this Court, as the said issue gets merged with the order in appeal and falls within the purview of the appeal. Therefore it may not be proper for this court to refuse to go into the question of jurisdiction of the Court below to entertain the above O.P., when the application for reference itself is barred by limitation. Hence, we allow the CMPs, permitting to raise the additional grounds. Accordingly, the CMPs are ordered.

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7.14. In Kaushalya Devi v. State of Punjab (2000 (1) LACC 462), the

Punjab & Haryana High Court has observed that the claimant was not able to furnish any proof of her having accepted the amount under protest and that the Land Acquisition Collector wrongly ordered the reference as time barred. But, in the instant case, even in the statements Exs.R6 and R7, the claimants had sought only Rs.1,200/- per cent and Rs.2,000/- per cent based on the agreement entered into between them and one Kandasamy Mudaliar. However, in the covering letter unsigned, it is stated that the claimants sought for Rs.7,000/- per cent, as mentioned by the then Land Acquisition Officer, without any basis.

7.15. Similarly, the statement of K.Subramanian is dated 17.2.1986, whereas the award is dated 23.9.1986. In the said statement, he has stated that the agreement was entered into for Rs.1,200/- per cent whereas in the covering letter, it has been stated as Rs.7,000/- per cent. However, there cannot be an application for enhancement dated 17.2.1986, when the award itself was passed much later, viz. 23.9.1986.

7.16. That apart, in the case of Thilagam, the first letter is dated 22.8.1986 and the second letter is dated 12.11.1986. But, there is no other application for enhancement of the compensation. In both the statements, what was demanded is a compensation of Rs.2,000/- per cent. If that be so, we are unable to see on what basis the land acquisition officer, in the alleged proceedings dated 21.1.1993, made a reference stating that a claim was made for a sum of Rs.7,000/- per cent. Our careful perusal discloses that the said proceedings does not even contain any signature or seal. This vital fact had not been taken into consideration by the Court below, while dismissing I.As., wherein it is specifically contended by the appellant that the very application for enhancement was manipulated. If that be so, assuming Ex.R7, the covering letter is only a xerox copy of the said proceedings and is treated as an application for reference, in our considered opinion, the same is also barred by limitation, as rightly pointed out by the learned Special Government Pleader, in view of Section 28A of the Act.

7.17. Section 28A of the Act reads as follows:

"Redetermination of the amount of compensation on the basis of the award of the court.—

(1) Where in an award under this Part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4 sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the court require that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded."

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7.18. Plain language of the aforesaid section would only mean that the period of limitation is three months from the date of the award of the court. It is also provided that in computing the period of three months, the day on which the award was pronounced and the time requisite for obtaining the copy of the award are to be excluded. Therefore, the aforesaid provision crystallizes that a written application under Section 28A is to be filed within three months from the date of the award excluding the time requisite for obtaining the copy. In the instant case, we do not see any written application under Section 28A nor there is any evidence on record to show that the same is filed within the time.

7.19. In State of Tripura v. Roopchand Das ((2003) 1 SCC 421) which arose under Section 28A of the Act, it was held that the period of limitation could be computed from the date of latest award, instead of the date of the earliest award. This proposition is not disputed by the appellant at all nor the appellant is objecting the respondents/claimants to seek relief under Section 28A if they are entitled to the same, provided they made an application on time and in accordance with the provisions of Section 28A of the Act.

7.20. On the other hand, the law on the point is well settled viz. the person, whose land is sought to be acquired, has got a right to seek enhancement and that right should be exercised as provided under Section 18(1) of the Act. Section 18 of the Act reads as under.

"Reference to court.—

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12 sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

7.21. To satisfy Section 18(1) of the Act referred to above, the following ingredients are required.

(a) the claimant should be the person interested who has not accepted the award (interested person who has not accepted the award, which in our considered opinion, includes the person who accepted the award with protest);

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(b) the claimant should make a written application to the Collector requiring the matter be referred by the Collector for determination

of the award as to
(i) objection to the measurement of the land;
(ii) the amount of compensation;
(iii) the persons to whom it is payable; and
(iv) apportionment of compensation among the persons interested.

It is, therefore, clear that there shall be a written application, apart from acceptance and protest, and that application should state the reasons. Section 18(2) again emphasizes the grounds on which the objection to the award is taken. Therefore, it makes clear that mere acceptance nor protest will not be sufficient unless there is an application in writing setting out the grounds on which the objection to the award is taken and seeking reference requiring the Collector to refer the matter to the Court. The proviso adds strength to the requirement that there shall be an application in writing by the words employed by the legislature that every such application shall be made and also prescribes the limitation (a) in the case where the person was present or represented before the Collector at the time of passing of the award within six weeks from the date of the award and (b) in all other cases, viz. where such person is not present or represented at the time of passing the award, six weeks from the receipt of notice under Section 12(2) or six months from the date of the Collector's award whichever first expires.

7.22. The decision in Harduman Sing Gill v. State of Punjab & another (2001 (2) LACC 359) where there was a delay of seven years in making reference to the Court by the Officer concerned, a Division Bench of Punjab & Haryana High Court awarded Rs.25,000/- as compensatory costs to the claimants to be paid by the officer concerned.

7.23. But, in the instant case, there is no such delay in making the reference by the Officer concerned. On the other hand, we are satisfied that there are sufficient materials available to hold that the very proceedings initiated under Section 18 was manipulated for the following reasons:

(i) there was no written application at all by the respondents/claimants;
(ii) the entire reference under Section 18(1) is proceeded based on the xerox copy of the proceedings dated 26.11.1986 said to have been sent by the then Land Acquisition Officer;
(iii) there is no entry available in the register maintained by the appellant either for filing the written application of the respondents/claimants for reference or forwarding their applications for reference; and

(iv) in any event, the proceedings dated 21.1.1993 for reference, viz. xerox copy of the covering letter marked as Ex.R7 series, is belated by seven years from the date of passing of the award.

7.24. Similarly, in Union of India v. Munshi Ram ((2006) 4 SCC 538) where during the pendency of Special Leave Petition, the claimants who had not sought for reference under Section 18, applied for redetermination of compensation under Section 28A, the Apex Court applying the Doctrine of Restitution, which itself is based on equity, held that those who secured certain benefit by reason of others getting such benefit, cannot be allowed to retain the same benefit, when the benefit given to others were reduced by orders of Court. Therefore, the latest award will be the basis

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for redetermination of compensation. The above principle is not disputed.

7.25. In the instant case, the very reference proceedings was initiated in both the LAOPs only based on the xerox copy of the proceedings of the Land Acquisition Officer which does not contain either the signature of the Land Acquisition Officer or any reference file number. The said unsigned xerox copy of the proceedings do not refer to any application for reference. In the case of Subramanian, Ex.R7 is only statement which was considered to be basis for reference and that statement is dated 17.2.1986, which is prior to the passing of the award and therefore, the said statement cannot be said to be an application made under Section 18(1) for reference setting out the grounds of objection to the award passed on 23.9.1986. In the said covering letter Ex.R7, the respondent/claimant expressed his willingness for enhancement of award of Rs.2,000/- and the same is also a xerox copy and the originals were not available in the file. Hence, in our considered opinion, there is no written application requesting for reference under Section 18(1).

7.26. Again in the case of Thilagam, Ex.R6, only xerox copies of the two statements are available and not the originals. The first statement is dated 22.8.1986 and the other is dated 12.11.1986. In both the statements, it is stated that an agreement was entered into for Rs.2,000/- per cent, but the same cannot be considered in view of the fact that the first statement is earlier to the passing of the award and the second statement is after passing of the award. However, there is no request for enhancement of compensation in the statements.

7.27. It is the specific case of the appellant that neither of the landowners had made any application in writing for enhancement. Therefore, in the absence of any written application, which is mandatory, the landowners are not entitled to seek a reference under section 18(1) of the Act, merely based on the Xerox copy of the unsigned covering letter dated 21.1.1993 found enclosed in Ex.R7, where again, there is no request for enhancement of compensation.

7.28. It is settled law that written application is mandatory and hence, there is no necessity for us to harbour on the point, as she is not entitled to seek reference at all. When she had, in clear terms, stated that she had not filed any application, there is no necessity to substantiate that the appellant has come with clean hands in his proceedings which is marked in Ex.R2 and the appellant has deposed in the box that there is an entry in the relevant records.

7.29. Therefore the claim of the landowners/respondents for enhancement of compensation is a nullity in the sense that (a) there was no written application, and (b) barred by limitation, which are basic ingredients of section 18(1) of the Act to maintain an application for enhancement of award. Our view is supported by the following decisions.

(a) State of Karnataka v. Laxuman (2005 (8) Supreme 49 = 2005 (8) Scale 760),

(b) Officer on Special Duty (Land Acqn.) v. Shah Manilal Chandulal ((1996) 9) SCC 414,

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(c) Mohd. Hasnuddin v. State of Maharashtra ((1979) 2 SCC 572), the relevant portions of which are extracted hereunder.

7.30. In State of Karnataka v. Laxuman (2005 (8) Supreme 49 = 2005 (8) Scale 760), the Apex Court has held as follows:

" the High Court was in error in holding that the Deputy Commissioner could make a reference even after the expiry of three years and 90 days from the date of the application for reference made by the claimant within the time prescribed by Section 18(2) of the Act. We uphold the view of the High Court in Paramraj case that the remedy having become barred the right could not thereafter be enforced. In that context, we hold that the claimant while approaching the court under Section 18(3)(b) of the Act would not be entitled to invoke Section 5 of the Limitation Act. In the light of these, we allow these appeals and set aside the orders of the High Court."

(emphasis supplied)

7.31. Similarly, the Apex Court, in Officer on Special Duty (Land Acqn.) v. Shah Manilal Chandulal ((1996) 9) SCC 414, held as follows:

"It is to be remembered that the Land Acquisition (Amendment) Act (68 of 1984) was enacted prescribing the limitation to exercise the power under Sections 4, 6 and 11 and also excluded the time occupied due to stay granted by the courts. Taking cognizance of the limitation prescribed in proviso to sub-section (2) of Section 18, the provisions of the Limitation Act were not expressly extended. Though Section 29(2) of the Limitation Act is available, and the limitation in proviso to sub-section (2) of Section 18 may be treated to be special law, in the absence of such an application by Land Acquisition (Amendment) Act (68 of 1984), the Act specifically maintains distinction between the Collector and the court and the Collector/LAO performs only statutory duties under the Act, including one while making reference under Section 18. It is difficult to construe that the Collector/LAO while making reference under Section 18, as statutory authority still acts as a court for the purpose of Section 5 of the Limitation Act.

Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that sub-section (2) of Section 29 cannot be applied to the proviso to sub-section (2) of Section 18. The Collector/LAO, therefore, is not a court when he acts as a statutory authority under Section 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to sub-section (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a court under Section 5 of the Limitation Act."

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7.32. In Mohd. Hasnuddin v. State of Maharashtra ((1979) 2 SCC 572), the Apex Court has held that the Court being a Tribunal of special jurisdiction has the duty and power to see that the reference made to it by the Collector under Section 18 of the Act complies with the conditions laid down therein so as to give the Court jurisdiction to hear the reference.

"The jurisdiction of the Court under the Act is a special one and strictly limited by the terms of Sections 18 to 21. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. A Court undoubtedly has certain jurisdiction over the reference, but it does not include any appellate jurisdiction over the Collector in respect of the reference made by him without statutory sanction.

It must accordingly be held that the making of an application for reference within the time prescribed by proviso to Section 18 sub-section (2) is a sine qua non for a valid reference by the Collector.

If an application is made which is not within time, the Collector will not have the power to make a reference. In order to determine the limits of his own power, it is clear that the Collector will have to decide whether the application presented by the claimant is or is not within time, and satisfies the conditions laid down in Section 18. Even if a reference is wrongly made by the Collector the court will still have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends on a proper reference being made under Section 18, and if the reference is not proper, there is no jurisdiction in the court to hear the reference. It follows that it is the duty of the court to see that the statutory conditions laid down in Section 18 have been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the court and, therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference.

In deciding the question of jurisdiction in a case of reference under Section 18 by the Collector to the court, the court is certainly not acting as a court of appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can possibly avoid. The court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to sub-section (2) of Section 18 of the Act, and if it finds that it was so made, decline to answer reference.

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The Court is bound to satisfy itself that the reference made by

the Collector complies with the special conditions, so as to give the Court jurisdiction to hear the reference. ... I am in entire agreement with the view expressed by Chandavarkar, J., that it is the duty of the Court to see that the statutory conditions have been complied with.

The view to a contrary effect taken by the Allahabad High Court in Secretary of State v. Bhagwan Prasad, Panna Lal v. The Collector of Etah and State of U.P. v. Abdul Karim and by a Single Judge of the Madras High Court in Venkateswaraswami v. Sub-Collector, Bezwada and by a Single Judge of the Punjab High Court in Hari Krishan Khosla v. State of Pepsu clearly do not lay down good law and these decisions are, therefore, overruled.

It is impossible not to feel sorry for the appellant in this case, who was guilty of almost incredible folly by not filing an application for reference under Section 14 sub-section (1) of the Hyderabad Land Acquisition Act, 1309 Fasli within the time prescribed therein, and is thus precluded from claiming what may be legitimately due to him by way of compensation. But, the decision must depend upon the construction of the section and the law must take its course. We trust that, as assured by it counsel, the State Government of Maharashtra will be generous enough to consider whether it should make an ex gratia payment to the appellant of a sufficient amount by way of compensation which will be commensurate

with the market value of the land acquired as on February 28, 1958. It certainly was a piece of land of some value as it was situate in the city of Aurangabad. "

7.33. An argument was advanced suggesting that the application and other connected records were lost during transit while shifting the Collectorate. But, there is no convincing evidence or explanation for non production of any acknowledgement for having filed the written application for enhancement of compensation under Section 18(1) of the Act, which is the burden lying on the respondents/claimants who claimed enhanced compensation.

7.34. That apart, there is no explanation for the long silence between the date of the award and the filing of reference, for not prosecuting the proceedings under Section 18(1) filed by the respondents/claimants. If the applications had been filed, the claimants could have sent reminders and pursued the claim and filed documentary evidence to substantiate the same.

7.35. For all these reasons, point (i) is answered in affirmative.

POINT (ii)

8.1. Whether the amount awarded by the Court below is sustainable on merits?

8.2. In view of the finding rendered in Point (i), the order of the Sub Court is set aside and the appeals are allowed.

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9.1. However, we are unable to refrain from adding that the perusal of the records would go to show that even without any written application,

the records were manipulated for fake claims for enhancement of compensation, which are also barred by limitation. These vital facts were lightly overlooked by the learned Fast Track Court Judge in his order dated 16.9.2003 in I.A.Nos.1217 & 1218 of 1996. When the very initiation of the proceedings is barred by limitation and without jurisdiction for want of written application, the entire relief granted to the respondents/landowners by order dated 25.11.2003 fails, of course, without prejudice their right to work out other remedy available under the statute, if they are so entitled to in law.

9.2. It is also brought to our notice by the learned Special Government Pleader that not only in the instant case, but in all similar applications for enhancement of compensation, attempts are being made by the claimants in connivance with the officials, who adopt dilatory tactics to create cause for the owners of the land seeking enhancement of the compensation and the requests were also being entertained and considered without probing into the limitation for filing such applications under Section 18 of the Act based on misplaced sympathy or apathy even by the Court.

9.3. We are, therefore, of the view that it is appropriate for the Government in all the matters either pending before this Court or before the Court below for enhancement of compensation under section 18(1) of the Act to investigate into (a) a bona fide of the written applications made under section 18(1) of the Act; and (b) the limitation in filing such applications, preferably through CBCID and file the materials so collected as evidence/additional evidence in the pending proceedings for the appreciation of the same by the respective Courts, to meet the ends of justice, so that the loss to the public exchequer may be prevented and immediate steps in this regard may be taken by the Government authorities as well as requisitioning bodies without any further delay to save the manipulated and fraudulent claims for enhancement of compensations. The Chief Secretary and Secretary to the Government, Revenue Department as well as Home Department, may take appropriate decision as indicated above.

kpl

Sd/-
Assistant Registrar,

/ture copy/

Sub Assistant Registrar.

To

1.The Additional District Judge
Fast Track Court No.4
Poonamallee.
2. The Chief Secretary to the Govt of Tamilnadu,
Fort S. George, Chennai.
3. The sEcretary to Government of Tamilnadu,
Revenue Department, fort ST. George, Chennai.

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4. The secretary to Government of Tamilnadu,
Fort St. George, Chennai.

+ One cc to Govt Pl3eader SR 13105
+ One cc to mr. K. Balaraman Naidu, Advocate SR 1291
NG (co)
sg 7/3/07

Pre-Delivery Judgment in
A.S.Nos.945 & 946 of 2004

2.3.2007.

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